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ABSTRACT

In addition to analyzing the basic policy issues inherent in the provision of special education and related services to handicapped and adjudicated youth, the paper is written to assist corrections personnel in understanding and implementing selected provisions of P.L. 94-142 (the Education for All Handicapped Children Act), to develop policy alternatives to enable correctional agencies to identify handicapped juveniles and provide them with an appropriate education, and to assist both correction and education agencies to cooperatively plan and deliver appropriate special education to handicapped adjudicated youth. Initial sections address the historical developments of P.L. 94-142, definition of the adjudicated handicapped youth population, educational and correctional agency responsibility, and current status of special education services. Specific aspects of P.L. 94-142 are examined: the individualized education program, least restrictive environment, procedural safeguards/parent participation, personnel needs and inservice training, funding/resources, timelines, and interagency cooperation. A final section contains charts composed of policy or written guidelines for decision making and corresponding program decision options (or practices which would comply with the policy and pinpoint any discrepancy between policy and existing services). It is pointed out that the policies in the charts may be used as a brief checklist for assessing current compliance. (SBH)

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# IMPLEMENTING THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, P.L. 94-142, IN YOUTH CORRECTIONS FACILITIES: SELECTED ISSUES

by
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## INTRODUCTION

Central to the implementation of P.L. 94-142, The Education For All Handicapped Children Act of 1975, is the provision for a "free appropriate public education" (20 U.S.C. 1411 S612(2)(B)), to meet the unique educational needs of each handicapped child. The ideal that all handicapped children have protected rights to an appropriate education is extended to handicapped youth incarcerated in correctional institutions. The two primary state agencies involved with a handicapped youth who commits an offense that warrants adjudication by a juvenile court, are the state education agency (SEA) and the state youth corrections agency.

The particular statutory mandate governing each state agency determines the policy direction for that agency. The SEA is generally responsible for maintaining a thorough and efficient system of public schools and to provide free public education for all its citizens. The SEA is also empowered under P.L. 94-142 with supervising the provisions of the Act relative to all other state agencies that provide educational programs and services to handicapped children and youth.

The primary mandate of the corrections agency is to provide rehabilitative services to help change the child's antisocial behavior and to protect society from the consequences of that antisocial behavior. While the continued education of a delinquent child is considered important by the correctional agency, in light of state compulsory school attendance laws for juveniles, one of their primary objectives is to change the child's behavior patterns that brought him/her into conflict with society. To meet the educational needs of a delinquent child, corrections institutions face several constraints, including (1) the short time a child is confined, and (2) the severity of the child's problems, emotional as well as academic, that have been built up through successive years of failure.

The policy focus is different for the SEA and the corrections agencies in carrying out the specific mandate of the agency with respect to the education of youth. The questions of what constitutes "appropriate" education for handicapped youth is usually determined by the unique educational needs of the student. In addition to analyzing the basic policy issues inherent in the provision of special education and related services to handicapped and adjudicated youth, the purpose of this paper is:

- to assist corrections personnel in understanding and implementing selected provisions of P.L. 94-142;
- to develop policy alternatives to enable correctional agencies to identify handicapped juveniles and provide them with an appropriate education; and
- to assist both correction and education agencies to cooperatively plan and deliver appropriate special education to handicapped adjudicated youth.

## DEFINING SELECTED ISSUES

### Historical Developments--P.L. 94-142

In 1975, Congress passed Public Law 94-142, The Education For All Handicapped Children Act.[1] The legislation culminated a decade of activity across the nation promoting the civil rights of the handicapped population. Prior to the 1960's, handicapped students were often subject to exclusion from public schools because they were either considered to be or indeed were unable to participate in the mainstream of the educational services offered. Thus, the pervading policies reflected an attitude that students must meet the criteria of the educational program rather than the program being tailored to the student. However, research, litigation, and state policies began to turn the tide, and in 1975, P.L. 94-142 established not only the right to an education, but the right to an education tailored to the handicapped student's unique and individual learning needs.

P.L. 94-142 may be the most broad-sweeping federal education law ever passed by Congress. Inherent in the intent of the law is the notion of "zero reject" (Turnbull, 1977). In essence, because of the historic problem of handicapped children and youth falling between the cracks of competing services, Congress established a sole state agency line of responsibility to help ensure that no handicapped child would be denied an education. Specifically, this establishes the state education agency as the only agency solely responsible for ensuring that every handicapped child has access to a free appropriate education. In light of the fact that other agencies, corrections, hospitals, and social services have jurisdiction over many children, some of whom may be handicapped, P.L. 94-142 mandates that through interlocking agreements and cooperative activities, the SEA will help these agencies provide appropriate special education to the handicapped students within their

[1]Parallel to P.L. 94-142 is Subpart D of the regulations governing Section 504 of the Rehabilitation Act of 1973. Because of the increased specificity of P.L. 94-142, as compared with Section 504, this paper refers to P.L. 94-142, but most of the issues herein relate also to Section 504.

jurisdiction, monitor such services, and assure their appropriateness annually to the U.S. Education Department (ED). These assurances, along with similar assurances for each local school district, are supplied to ED in the form of an annual program plan or funding application.

Since passage of their respective laws and policies and since the passage of P.L. 94-142, state and local education agencies have made great strides in improving the availability of appropriate special education and related services to handicapped students within their jurisdictions. Thousands of handicapped students are receiving an education that previously were excluded. Tens of thousands more are receiving services more tailored to their needs. However, in the efforts to gear up for and implement P.L. 94-142 for those students most obviously within the jurisdiction of the public school system, there remain pockets of the handicapped student population awaiting full implementation. These populations include migrant students, American Indian students within the jurisdiction of the Bureau of Indian Affairs, handicapped students with bilingual/bicultural needs, and handicapped students in other state agency jurisdictions, such as juvenile and adult corrections. Correctional agencies are specifically mentioned in the regulations as required to identify the handicapped student population of their jurisdiction and to provide to them an appropriate education (§121a.2).[2] Not only is there a need to comply with a federal mandate, but recent studies (Children's Defense Fund, 1976; Meta Metrics, Inc., 1977; and Santamour and West, 1979) indicate that effective educational, vocational, and rehabilitative programs for the handicapped young adult offender are an investment that can reduce recidivism and higher welfare costs for both state and federal governments.

In addition to the sole state agency requirement, any agency implementing P.L. 94-142 must assure:

- an active child find program;

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[2]All regulatory citations, unless otherwise noted, are from Federal Register, Vol. 42, No. 163, Tuesday, August 23, 1977.

- through interlocking local, state, and federal mechanisms, a monitoring and accounting system which establishes a sole state agency as responsible for ensuring that every handicapped student aged 3 through 21[3] within the state has access to a free appropriate public education (FAPE)--the state education agency (SEA) is designated as the "sole state agency";
- in order for the SEA to ensure that students in agencies other than the public schools receive an appropriate education, written interagency cooperative agreements are to be developed detailing responsibilities, resources, and procedures for the provision of FAPE to any handicapped student, regardless of which state agency is providing the services;
- parent and guardian participation is facilitated through provisions such as full participation in evaluation and placement decision making;
- every handicapped student shall have the education services needed to promote optimal development outlined in an individualized education program (IEP) developed by parents and school;
- each student shall be educated in the least restrictive environment (LRE) appropriate in order to provide maximum freedom of mobility and contact with the nonhandicapped world; and
- extensive personnel development procedures are in place to help ensure that not only these provisions are implemented, but are implemented with qualified personnel.

In summary, if correctional facilities are serving handicapped clients of school age, they must provide special education and related services in accordance with the provisions defined in The Education For All Handicapped Children Act, P.L. 94-142. Thus, the task for corrections is twofold: (a) define and identify the

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[3]The age ranges 3 through 5 and 18 through 21 are mandated only if state policies are not in conflict, e.g., if state school eligibility ages are 6 to 18, then the 3 through 5 and 18 through 21 age provisions are not mandated.

population and (b) develop policies and programs that assure appropriate and mandated special educational services.

Defining the Population

Reports of the educational characteristics of adjudicated youth and the incidence of handicapping conditions have appeared at an increasing rate over the past two decades. Much of the recent data confirms the fact that indeed many juveniles who have been committed to correctional facilities are "handicapped," as defined in §121a.5 of P.L. 94-142:

> ...the term 'handicapped children' means those children evaluated in accordance with §§121a.530-121a.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services. (See §121a.5-6 for complete explanation of each disability.)

There exists sufficient statistical information--even if there are variances in the overall findings concerning educational attainment levels among offenders--that clearly demonstrates a need for appropriate special educational and vocational programming for the offender population. According to recent statistics:

- It has been estimated that up to 90 percent of the adult inmates of the penal institutions are school dropouts. The 1970 census indicated that possibly 25 percent of the adults of the general population dropped out before high school graduation. For the general population, the average completed grade level for adults was 12.1, while the figure was an average of 8.5 for adult inmates. (Meta Metrics, Inc., 1977)
- In a recent study conducted by the Law Enforcement Assistance Administration (LEAA), it was estimated that 34 percent of the juvenile corrections population were functionally illiterate. (LEAA, 1975)
- One national survey reported that 42.4 percent of the juvenile corrections population were handicapped. The most prevalent handicapping conditions were found to be (a) mental retardation, (b) seriously emotional disturbance, and (c) specific learning disabilities. (Morgan, 1979)
- A joint research effort by the National Center for State Courts and the Association for Children with Learning Disabilities recently published preliminary findings classifying a significant percentage of the population as learning disabled. (Keilitz, Zaremba, Broder, 1979)

The handicapping conditions most often studied have been mental retardation and learning disabilities. The research efforts for the most part have suffered from sample, definition, and sophistication factors, however, some general conclusions have emerged. Most studies have found an unusually high prevalence of mental retardation (12 to 15 percent) as compared to the general population (2 to 3 percent) (Smith, 1978)(a). Secondly, efforts to identify the number of adjudicated youth who have learning disabilities have reported incidence figures ranging from 30 to 50 percent of the population depending on criteria. Definitional criteria varies from state to state, ranging from requiring only an average I.Q., coupled with "significant" academic underachievement (2 to 3 year lag), to evidencing organic neurological impairment through the use of specially designed evaluation measures. Regardless of the actual figures, there is sufficient evidence to warrant the suspicion that the incidence of learning disabilities occurs at a higher rate in the adjudicated population than in the general population.

The U.S. General Accounting Office (GAO) in 1976-77 undertook a study of the extent of learning problems among institutionalized juvenile delinquents in Connecticut and Virginia, and described the then-current efforts of the public schools and the correctional facilities in dealing with such problems. The GAO reported the need for this review because of:

- significant increases in juvenile crime;
- growing evidence indicating a correlation between children with learning problems and children demonstrating delinquent behavior patterns; and
- expanding number of studies indicating that the public schools can have a measurable effect on reducing juvenile crime.

Overall, the results of the GAO's (1977) testing/incidence studies in Connecticut and Virginia substantiate similar studies conducted in other states which also showed considerable academic underachievement in their delinquent populations. For example:

- 90 percent of the girls tested in a Tennessee State reformatory were 2 to 7 years below their grade in reading.
- 57 percent of the youths referred to the Norfolk, Virginia, Youth and Family Clinic by the juvenile court were found to have general learning disabilities. (p. 15)

Agency Responsibility

While research data has evidenced learning problems in the incarcerated population, reports have also documented the presence of such problems prior to the youth committing an offense. Handicapped youth who become delinquent often have a history of school or academic failure (Glueck and Glueck, 1950; Burke and Simons, 1965; Murray, 1976; Toby and Toby, 1962; Clarizio and McCoy, 1970; as cited in Smith, 1978)(a) and have also exhibited behavioral problems that have resulted in school truancy and difficult family relations. Thus, both schools and corrections share in the responsibility at one time or another for the same population. When the handicapped youth comes before the juvenile court, the public schools and other public agencies involved with the handicapped youth often discover jurisdictional problems. This jurisdictional problem may reflect that the policies and procedures of the agencies involved with the handicapped youth are not clearly delineated with respect to responsibility and lines of authority. As will be discussed in the latter part of this paper, interagency agreements between public agencies charged with providing services to handicapped youth who commit offenses can begin to lessen jurisdictional problem area and help to maintain the necessary special educational services.

If academic failure may be associated with delinquent behavior, schools and correctional agencies must attempt to remediate the prevailing serious educational problems of troubled youth. Recognizing that a large segment of the youthful offender population in institutions has significant educational problems, questions arise about the efforts, resources (materials and staff), and policy dictates needed by correctional and related systems to enable them to provide appropriate educational programs. Of immediate import is the need to develop such policies and

practices in order to, at a minimum, meet the requirements of P.L. 94-142.

Faced with this dilemma, policy makers and researchers have begun to look at current special education services for troubled youth. Preliminary conclusions are twofold:

- the information on special education programs and services for troubled youth is surprisingly limited; and
- the available information depicts a bleak picture of the current quality of programs.

The reasons for these facts are many. Education has not historically been a priority for corrections. Budget allocations for programs provide clear evidence to this fact. State education allocations for correctional programs are as low as 5 percent of the total budget (Morgan, 1979). Secondly, education and correctional agencies have traditionally viewed their missions as quite different and separate, thus creating few opportunities or reasons for sharing expertise and resources. Right-to-treatment litigation on behalf of handicapped incarcerated youth and research projects have consistently reported the following special education program inadequacies:

- a serious lack of trained special education and related services personnel;
- inappropriate or insufficient educational evaluation and identification procedures for determining special education needs;
- failure to meet even the minimum federally mandated special education requirements; and
- failure to plan cooperatively with education agencies for the transmission of relevant educational information, both when the student leaves the public school arena and upon return.

Current Status of Special Education Services

The status of the implementation of P.L. 94-142 in correctional settings was the focus of a recent national survey (Lincoln Land Special Education Systems,

1979). The survey, conducted in the winter of 1979, compiled data obtained from 1,000 questionnaires sent to 60 state, federal, territorial, and metropolitan facilities. The findings showed that the major stumbling blocks to the implementation of the law were (a) the misperception that P.L. 94-142 does not apply to correctional facilities at all, and (b) the lack of knowledge about identification of handicapping conditions. Other results included:

- Thirty-four percent of the jurisdictions reported some level of compliance with P.L. 94-142.
- Juvenile facilities in general are much more aware of P.L. 94-142 than the adult facilities, and the level of special educational activity is much higher in the juvenile settings.
- Twenty percent stated that they are collecting data and/or are negotiating implementation issues with the state department of education.
- Currently, there is a lack of communication, and occasionally there exists uncooperative situations between the correctional and educational state agencies.
- A common complaint is the lack of information on the implications of P.L. 94-142 for corrections.
- The findings regarding the incidence of handicapping conditions supported the unusually high figures previously reported in the literature.
- Between 80 and 90 percent of the institutional youth have not completed high school.
- Average performance levels range between 2 to 4 years below grade level.

Class action right-to-treatment suits have been filed in at least two states on behalf of handicapped students in corrections. Doe v. Bradley, formerly Doe v. Henderson (CA #7980-1, Tenn.), alleges that mentally retarded youthful offenders are not receiving services, including special education, appropriate to their unique situation. The case is filed under federal law, including P.L. 94-142, as well as

state law. Expert witnesses for the plaintiffs found problems in classification and identification, inappropriate IEP development, failure to deliver needed services as documented in students' files, lack of special educators and qualified support personnel, and severe shortage of parent or surrogate parent participation in educational decisions, as well as insufficient least restrictive alternatives and procedural safeguards (Smith, 1978)(b). Willie M., et.al. v. James B. Hunt, et.al. (#CC79 0294) was filed in North Carolina on behalf of seriously emotionally and mentally handicapped youthful offenders who are also violently assaultive, alleging that the state is failing to provide appropriate services, as mandated by P.L. 94-142 and state laws, in current correctional and hospital settings. The plaintiffs in Willie M. argue that for the seriously mentally and emotionally disturbed youth who also displays violent and aggressive behavior, current service alternatives, which include only youth corrections facilities or state mental health facilities, do not provide the necessary treatment in conjunction with the needed security.

The remainder of this paper will analyze selected policies of P.L. 94-142 that have been identified either in litigation, literature, or by the officials themselves as not being adequately implemented in corrections. After the problem areas are identified, alternative remedies are offered.

## Analyzing Selected P.L. 94-142 Issues for Corrections

A summary of the most often cited special education and related services implementation issues in correctional facilities, as reported in these cases and in the literature, include:

- Provision of an individualized education program (IEP): The special education and related services needs, goals, and objectives of each handicapped student must be detailed in an individually written document (IEP) which states what services are needed, the appropriate least restrictive environment to provide those services, and how the effectiveness of the program shall be evaluated (§121a.340).

- Delivery of services in the least restrictive environment (LRE): The handicapped student shall be educated with nonhandicapped students as much as is appropriate to that particular student's needs (§121a.550).
- Assurance of procedural safeguards, including parent (or surrogate) participation: In order to protect the handicapped student from arbitrary educational decision making, P.L. 94-142 requires that decisions be made in concert with the parents and, unless inappropriate, the student; the law provides that for those students whose parents are unknown or unavailable, or if the student is a ward of the state, a surrogate parent shall be appointed to represent the student's interests (§121a.500).
- Personnel training and standards: Special education and related services must be provided by qualified professionals, and in order to do so, each agency is required to recruit such persons and develop inservice training programs (§121a.380).
- Availability of needed funding: To provide appropriate services to all handicapped students is a costly endeavor, thus, P.L. 94-142 (§121a.700) and other available programs provide funds to meet this need.
- Provision of services and safeguards must meet specific timelines: The timelines in P.L. 94-142 may need to be adapted for the abbreviated school term most students encounter in short stays in corrections.
- Interagency cooperation: Cooperative arrangements are necessary to facilitate (a) the identification of handicapped students, (b) the continuity of services between public school and correctional setting, (c) the access to available community services for efficient program planning, and (d) the mandated program monitoring role of the state education agency of services provided by other state agencies (§121a.600).

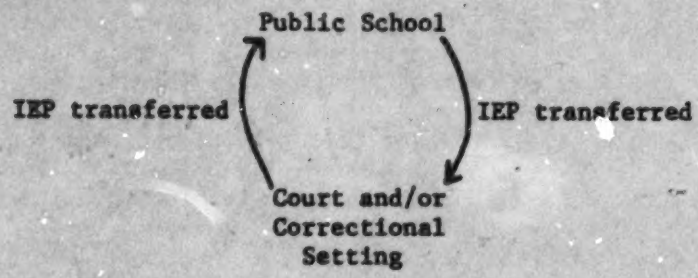
A brief discussion of the parameters of each issue and implications for youth corrections and other related agencies follows.

Individualized Education Program (IEP). Educational placement procedures, as mandated by P.L. 94-142, require that based upon his educational evaluation, each handicapped student shall be provided a written Individualized Education Program (IEP), which defines (a) current performance, (b) long-term educational goals, (c) short-term objectives, (d) services required to meet the goals and the least restrictive setting for those services, (e) initiation dates and duration of services, and (f) evaluation criteria. The IEP, in essence, describes what is "appropriate" for each handicapped youth as documented through evaluation procedures, and it is developed by a team of professionals in concert with the student (unless inappropriate) and the parents or surrogate.

Some adjudicated youth will already have an IEP from their local education setting, which should be transmitted to the court and/or correctional facility in a timely fashion in order to assist the court and corrections in their planning for that student. If the IEP is not expeditiously transmitted, there is a loss of valuable time, a possibility of duplication of services, and/or loss of the continuity, which is so essential for handicapped students. Others, upon determination of a handicapping condition for the first time, will require a new IEP to be developed in the correctional setting, which at the time of the student's release should be transferred to the receiving school.

The IEP is the vehicle to ensure that the proper resources are provided regardless of the setting. Policies between the state education agency and corrections are vital for ensuring that the IEP is operational for the handicapped youth at time of placement change. In a preliminary policy interpretation document from the U.S. Office of Special Education (OSE) (1980), the IEP is defined as "a communication vehicle between all participating parties to ensure that they know what the child's problems are, what will be provided, and what the anticipated outcomes may be" (McDaniels, 1980). This vehicle could form the crux of the

transition process between schools and institutions.




In order to facilitate such coordination, interagency agreements should be developed which address jurisdictional problems and remedies, responsible personnel to expedite IEP transfers, continuity of form and content of IEP's, and monitoring systems to ensure effectiveness of such procedures. The Massachusetts Department of Education has implemented a program, The Special Education Coordinator Project, which assigns a special education coordinator to a handicapped student who is leaving the correctional facility and needs community services.

Least Restrictive Environment (LRE). P.L. 94-142 states in §121a.550, subpart (b), of the regulations:

> Each public agency shall insure: (1) that to the maximum extent appropriate, handicapped children, including children in public and private institutions or other care facilities, are educated with children who are not handicapped.

This provision defines least restrictive environment (LRE), often erroneously referred to as "mainstreaming." Mainstreaming is the term used for the placement of the handicapped in the regular classroom, thus being only one LRE alternative.

Inherent in the concept of the least restrictive environment mandate of P.L. 94-142 is the provision for a continuum of alternative placements. Along this continuum, there are opportunities for alternative placements, i.e., private day treatment facilities, homebound instruction, private schools, self-contained special education classes within a public school, resource room programs within a

public school, and itinerant teacher/tutoring programs. These alternative programs are all designed to meet the unique special education needs of the handicapped child.

There is a scarcity of placement alternatives available to the handicapped adjudicated youth both within the traditional corrections facility, and outside of the institutional system. Public school release programs are usually limited to those adjudicated youth who are mentally, emotionally and socially stable, or who offer little or no discipline problem for the receiving school system. Handicapped adjudicated youth have often not been considered to have the academic, social or vocational skills to be judged eligible for a public school release program or work release program. Even within the correctional agency itself, handicapped students often fall victim to program criteria which result in their being regarded as functioning too low to benefit from programs such as Title I (ESEA) reading or math programs and vocational training programs.

The individualized education program (IEP) should specify those program options and alternative placements which can more appropriately meet the educational needs of the youth, even if the "placement" is considered restrictive by virtue of being in the corrections facility. Where appropriate settings or programs are available in the community, agreements should be developed by the respective agencies detailing cooperative arrangements for the placement of the corrections' handicapped students.

Procedural Safeguards/Parent Participation. In order to address the historical problem of arbitrary decision making regarding handicapped students, as well as the intent to tailor special education to each handicapped student, P.L. 94-142 mandates certain procedural safeguards and parent participation in all evaluation and placement decisions. The presence of these provisions has typically not been widespread in correctional facilities.

The procedural safeguards include nondiscriminatory evaluations, IEP and placement decisions made cooperatively between family and agency, and, in the case of disputes, access to impartial hearings. Where the student is a ward of the state or when parents are unlocatable or unknown, a surrogate parent must be appointed to represent the student's interests in educational matters. Often adjudicated youth are wards, or their parents are geographically unavailable. Where the surrogate policy is in place, corrections may elect to use the surrogates identified by the SEA or develop their own from an active volunteer program. Surrogates are to be trained in order to competently serve the student. Surrogate training models are being developed in Vermont, Connecticut, Louisiana, North Carolina, and other states.

Where the students are wards of the state or when the parents are unknown, the law is clear with regard to the assignment of a surrogate. However, less clear is the provision that a surrogate is to be assigned if a parent is unable to be located (Ross, 1979). Secondly, a parent may be located but unavailable. In many states, correctional facilities may be hundreds of miles from a student's home, thus making parent visits to the institution often impossible. How then may the intent of the law be met? In some instances, conference calls in conjunction with mailing needed materials may provide the necessary parent involvement in such activities as IEP development, or the parent may give permission for the appointment of a surrogate. However, if the geographic barriers are confounded by a lack of interest in participation, the student may still be left without a representative. Such a situation was addressed in a recent court order, Mattie T. v. Holladay (CA. NO. DC-75-31-S, N.D. MISS.), which addressed the needs of students in institutions for the retarded, but developed procedures which may be applicable to correctional facilities. The procedures include:

- For all children placed by a court in the legal custody of a public agency and who are living with foster parents, the foster parents shall serve as

surrogate parents.

- For all other children placed by a court in the legal custody of a public agency, the agency shall appoint surrogate parents.
- For children residing in a residential facility but who have not been placed by a court in the legal custody of a public agency, the agency responsible for their care shall:
  (1) make and document at least three attempts to contact each child's parents to inform them of special education placement procedures and to explain their role as advocates for their child; but if these efforts fail to involve the parents or if the parents fail twice to attend IEP meetings,
  (2) the agency shall appoint a surrogate parent for the child unless the child's parents object to the appointment in writing, in which case the agency shall inform the parents that the surrogate is appointed solely for the purpose of representing the child's interests in educational decisions.

Surrogate parents must meet all the training and impartiality requirements detailed in §121a.514 of the P.L. 94-142 regulations.

The procedural safeguards in P.L. 94-142 also define activities for resolution of disagreement between parents and professionals. These procedures include the right to an impartial hearing where all parties present evidence and an impartial hearing officer renders a decision. Either the parent or the agency may appeal the decision to the state agency. Such disputes usually revolve around the classification of the student as handicapped and what constitutes appropriate services and placement.

Without parent involvement throughout the identification, IEP, and placement decisions, such procedural safeguards are empty promises. Thus, as the IEP is the hub of the delivery of services, so, too, parent participation is the hub of

the procedural safeguards.

Personnel Needs and Inservice Training. In order to ensure the delivery of services by qualified personnel, Public Law 94-142 provides for a comprehensive system of personnel development, inservice training, and technical assistance to local education agencies, including participation of other agencies and institutions. The state education agency (SEA) is charged with the overall responsibility for implementing appropriate personnel development and inservice training programs for state and local education agency personnel and for other agencies which provide services to handicapped children and youth.

One of the major problems reported in the GAO Report to Congress (1977), as well as in litigation investigative reports, has been the lack of adequately trained teaching and support staffs at the youth correctional institutions. The GAO Report noted that even if initial diagnostic testing of the handicapped incarcerated population provided accurate identification of learning problems, the institutions lacked special education teachers trained to help children overcome such problems. The GAO Report stated that, "of the 353 teachers in the institutions visited, only about 6 percent were certified in special education" (p. 20). The following chart represents a listing of the states and teachers studied:

| STATE | TOTAL TEACHERS | CERTIFIED IN SPECIAL EDUCATION | |
|---|---|---|---|
| | | NUMBER | PERCENT |
| California | 119 | 3 | 3 |
| Colorado | 32 | 3 | 9 |
| Connecticut | 32 | 1 | 3 |
| Texas | 96 | 9 | 9 |
| Virginia | 74 | 5 | 7 |
| | 353 | 21 | 5.9 |

Not only are special education teachers in short supply, but classroom teachers in correctional facilities generally are not trained in how to recognize or evaluate

a juvenile's learning problem or the teaching methods and techniques that should be used in attempting to remediate such problems. Some states, such as North Carolina and Massachusetts, have already begun inservice training programs.

Clearly, there is a need for personnel training in both the public schools and in correctional settings. Other recent studies (Atlanta Association for Retarded Citizens, Inc., 1975; and Santamour and West, 1977) have shown that personnel in the judicial system know little about the problems and special needs of the handicapped offender. Inservice training programs sponsored by the SEA and/or corrections can help to sensitize the corrections community, as well as police and court officials, to the unique needs of the handicapped offender and to the mandates of P.L. 94-142 that provide, under law and regulation, procedural and educational safeguards to the handicapped youth.

Funding/Resources. Probably the greatest obstacle to the kind of comprehensive programming required by P.L. 94-142 is funding (Hedge, 1979). Studies indicate that programs for the handicapped offender are considered economical (Wisconsin Department of Health and Social Services Report, 1978). Another study suggested that the average rehabilitated retarded offender returns seven to ten dollars in income tax for each dollar spent on his/her rehabilitation (Santamour and West, 1977, p. 10). The Atlanta Study (1975) found that if more funding were available, most prison officials and their staffs would welcome new programs for the handicapped offender.

Inadequate funding often results in acute understaffing. What little resources and equipment available for providing related services to handicapped youth often remains unused because of the lack of trained personnel. The shortage of speech, physical, and occupational therapists in a juvenile correctional facility means that these needed related services, which might be necessary for the handicapped youth to benefit from special education instruction and programming, are not available.

As was previously mentioned, interagency cooperative agreements between the SEA and other state agencies providing programs and services for handicapped youth can specify those areas where service delivery is acute and begin to address the policy issues in personnel preparation, inservice training, and funding for the provision of special education and related services. Meta Metrics, Inc. (1977) reported many diverse funding sources available for corrections' education, thus corrections' education programs may be the result of scattered efforts at the local, state and national levels to address the problems of vocational, general, and higher education for offenders.

Documents are available, such as Getting the Buck to Stop Here: A Guide to Federal Resources for Special Needs (CEC, 1979), which outline federal resources available to educate handicapped students. Not only may funds and resources be available locally and federally, and require access, coordination, and efficient use, but often an insufficient education budget reflects organizational priorities rather than actual availability of dollars. In a recent report, per capita costs in youth corrections ranged from $16,120 to $41,977 and education budget allocations ranged from 5 to 57 percent of the total budget, depending on the state (Morgan, 1979).

Timelines. P.L. 94-142 defines the time periods for evaluation, IEP development, placement, and notice of disagreements and hearings.

- An IEP must be developed within 30 days of the determination that a student is handicapped.
- Placement and delivery of services must be immediately after the IEP development and parental approval.
- If a hearing is requested to resolve a dispute, a decision must be rendered no later than 45 days from the request.
- A state appeal of the hearing decision must be concluded within 30 days after the request of the appeal.

While these timelines facilitate expeditious procedures in the normal school setting with 180 school days for approximately 12 years, they may not be facilitative in the correctional setting where the average stay is only about six months. The corrections agency may feel that the timelines are too lengthy to assure speedy and appropriate services to the handicapped population. Thus, the timelines may be adapted to reflect the abbreviated "school" term but may not exceed the mandated ones.

Interagency Cooperation. All of the above points may need to be addressed in interagency agreements, including:

- IEP and student transition policies;
- least restrictive setting alternatives;
- procedural safeguards/parent participation;
- personnel and program standards;
- coordination of the delivery and financing of related services; and
- timelines.

In addition to those areas of interagency coordination already mentioned, other areas include program monitoring by the state education agency (SEA), interagency policy clarifications, and jurisdictional barriers. P.L. 94-142 mandates that one agency (the SEA) be responsible for ensuring that a free appropriate education is offered to all handicapped students. This intent requires that the SEA monitor the implementation of P.L. 94-142 in all other agencies. Some states have had to reevaluate existing policies in order to allow such interagency monitoring. Secondly, the qualifications of the personnel and programs must meet SEA standards. As noted before, historically the standards for both personnel and educational programs have differed for corrections. Thus, standards and activities for bringing such services within the realm of SEA standards have been an issue in many states. Finally, jurisdictional barriers have made student transfers from public school to corrections and back again very inefficient with regard to educational program continuity.

All of these interagency questions should be addressed in cooperative agreements and activities. Several states, such as Colorado, Illinois, Louisiana, and Maryland, among others, have begun such arrangements. The objectives for developing agreements among all participating agencies, both at the state and often at the local level, include (a) the efficient and effective delivery of special education and related services to each handicapped youth, both in the correctional setting and in the setting to which he/she is returned, (b) the ability to resolve jurisdictional and/or policy inconsistencies which fail to promote such effective service delivery, and (c) the development of mutually acceptable program monitoring procedures.

It was clearly the intent of Congress that no handicapped child be excluded by recipients of federal funds from an appropriate education and that all involved agencies follow a policy of zero reject. This policy of zero reject means that all handicapped children of school age must be afforded a free appropriate public education, and that each state must adopt policies and formulate Annual Program Plans (APP's) for achieving this goal, in essence to assure that no student should fall between the interagency gaps.

Each state participating in receiving federal funds generated by P.L. 94-142 must submit to the Office of Special Education, U.S. Education Department, an Annual Program Plan (APP) outlining each state's goals, objectives and activities for satisfying the mandates of the law. The APP is updated periodically, and one of the additional requirements of the law is an assurance that policy statements are in effect that detail the SEA's responsibilities for compliance and monitoring of all agencies providing programs and services to handicapped children and youth.

## POLICIES AND PROGRAM OPTIONS FOR IMPLEMENTING P.L. 94-142

The remainder of this paper is dedicated to providing policies and service decisions which offer possible strategies for implementing not only the P.L. 94-142 assurances, but also state policies and professional standards. Much of what is proposed would be in the form of an interagency agreement with the state education agency (SEA). The charts are composed of two parts: (1) the policy or written guidelines for decision making, and (2) a program decision option (or practice) which would comply with the policy and pinpoint any discrepancy between policy and existing services (practice).

The policies set forth in the charts are those contained in federal, and often in state, laws pertaining to the education of handicapped children. They are drawn in large part from the Special Education Administrative Policies Manual (Torres, 1977) which was developed with the assistance of 380 education agencies throughout the country and representatives from major national educational organizations as a policy manual and guide for administrators faced with the task of implementing programs for exceptional children and youth.

The policies in the charts may be used as a brief checklist for assessing current compliance. The program options offer suggested ways for translating the policy into actual practice within the correctional setting.

| POLICY | PROGRAM OPTION |
|---|---|
| I. STATE EDUCATION AGENCY RESPONSIBILITY | |
| P.L. 94-142 requires that the state education agency be responsible for ensuring that all requirements of the Act are carried out. All education programs within the state for all handicapped students, including programs administered by any other state or local agency, must meet state education agency standards and be under the general supervision of persons responsible for the education of exceptional students. This provision establishes a single line of responsibility within one state agency for ensuring the education of all handicapped children with each state. | The responsibility to supervise all education programs rests with the state education agency under P.L. 94-142. Therefore, interagency cooperation is essential in order to coordinate all programs and services required for exceptional students' programs. |
| 1. P.L. 94-142 mandates a free appropriate public education for all handicapped students ages 3 through 18 by September 1, 1978, and ages 3 through 21 by September 1, 1980, unless state policies conflict. | The Youth Corrections education administrator, after establishing service agreements with the public school agencies, may submit a report detailing the numbers and types of handicapped children being served in the institution. |
| 2. There shall be a policy of student identification and service priorities. | The federal priorities are (1) children unserved and (2) children inadequately served. The Youth Corrections administrator will be predominantly concerned with the latter. The policy of screening procedures with eventual in-depth evaluation should be planned with procedures for referral to and eventual placement in special education services. |
| II. NONDISCRIMINATORY EVALUATION | |
| 3. Each education agency shall develop policies assuring nondiscriminatory testing and evaluation procedures, including the following: | To implement policy as stated. |
| (a) Assessment instruments should be adopted for use with children with sensory or motor impairment, and consideration should be given to each student's age, socio-economic level, native language, and cultural background. | |

| POLICY | PROGRAM OPTION |
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| (b) All communication with child and guardian shall be in their native language or the language of the home.<br><br>(c) Local test norms shall be established.<br><br>(d) Criterion referenced tests should be included.<br><br>(e) Instruments should be administered by qualified personnel.<br><br>(f) No one result shall determine placement.<br><br>(g) Within 30 days after initiation of the evaluation process, there must be a written statement of the student's educational needs. | |
| III. INDIVIDUALIZED AND APPROPRIATE EDUCATION | |
| 4. Based on the indicated needs of the student determined by the evaluation team, a written specific individualized education program (IEP) shall be developed before special education and related services are provided. The IEP shall be updated no less than annually or when there is a program change. The IEP decision-making team shall include the following persons:<br><br>(a) A representative of the education agency other than the student's teacher;<br><br>(b) At least one teacher qualified to provide special education;<br><br>(c) The parent or surrogate;<br><br>(d) Where appropriate, the student; and<br><br>(e) Others, at the discretion of parent or agency. | The SEA must, in their written plan, assure that there is an IEP for every handicapped student receiving special education, regardless of the service agency. The Youth Corrections administrator should keep written copies of the up-to-date IEP to be made available to the SEA. The administration may choose to adopt SEA procedures in lieu of developing separate ones, which would provide uniformity. |

| POLICY | PROGRAM OPTION |
|---|---|
| 5. The following components must be included in every IEP for every handicapped student needing special education:<br><br>(a) A statement of the student's present educational level, including academic, social, prevocational, vocational, psychomotor, and self-help skills.<br><br>(b) Goals describing the educational performance to be achieved by the IEP.<br><br>(c) Short-term instructional objectives which must be measurable, intermediate steps between the present level of performance and the goals.<br><br>(d) A statement of the specific educational services needed by the student, including special education and related services.<br><br>(e) The date these services will begin and length of time to be given.<br><br>(f) A description of the extent to which the student will participate in regular education.<br><br>(g) Justification for the type of educational placement.<br><br>(h) A list of individuals responsible for implementation of the IEP.<br><br>(i) Objective criteria, evaluation procedures and schedules for determining, at least annually, whether short-term objectives have been met. | The IEP provides an instrument which could be used by the administrator to pinpoint services needed for planning as well as manpower needs. The IEP is the planning vehicle between school and correctional setting. |
| 6. Between the time the student is referred for evaluation and a placement decision is made, he/she is to receive educational services.<br><br>9. Special education and related services shall be directly related to the IEP. Following are examples of related services: | After compiling the needed services from the review of IEP's, the administration will know what services are to be |

| POLICY | PROGRAM OPTION |
|---|---|
| (a) Vocational education;<br><br>(b) Therapy;<br><br>(c) Speech and language services;<br><br>(d) Social services;<br><br>(e) Counseling;<br><br>(f) Psychological services; and<br><br>(g) Extracurricular services. | delivered on the institution campus and what services may be contracted from the SEA and other agencies. |
| 8. Federal law includes <u>transportation</u>. | When the administrator has concluded that there are needed services within the community, transportation to and from the services shall be provided. Interagency agreements will define the line and procedure for reporting and funding, which would be arranged with the SEA. |
| IV. <u>PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT</u> | |
| 9. Each education agency shall have a policy guaranteeing each handicapped student a free appropriate education, which shall not be limited due to service inadequacies and shall be delivered in the <u>least restrictive setting</u>. Placement recommendations shall be based on education and related services needed, not on categorical programs available. | Varied settings could be developed incorporating techniques including shortened class period, open classroom, one-to-one tutoring, experiential learning. Where specialized or related services are needed for a few students, the Youth Corrections administrator may arrange for services available by the SEA or contract for community services. Federal law states that the LEA services are to be available to any handicapped child. |
| 10. <u>A Continuum of Services</u> must be available from least restrictive to most restrictive, including:<br><br>(a) Regular classroom placement with auxiliary services;<br><br>(b) Resource room programs; | Students served by Youth Corrections often would not require a placement more restrictive than a resource room or regular class with auxiliary services if such services were readily available and staff were trained in alternative teaching strategies. |

| POLICY | PROGRAM OPTION |
|---|---|
| (c) Integrated programs;<br><br>(d) Self-contained classroom;<br><br>(e) Diagnostic placement;<br><br>(f) Parent-child instruction;<br><br>(g) Career and vocational placement; and<br><br>(h) Residential services. | |
| 11. Each exceptional student shall have the opportunity to receive a certificate or diploma upon successful completion of the educational program. | The administrator could follow state policy in regard to additional certification. |
| V. PROCEDURAL DUE PROCESS AND PARENTAL PARTICIPATION | |
| 12. When initial evaluation and placement decisions are being considered, due process protections shall be provided to the student's guardian (surrogate) and schools. Such procedures shall include the minimum of: | Youth Corrections due process procedures must comply with the state and federal standards, including practices and timetables. Written policy statements outlining procedural safeguards should be supplied to every parent (guardian) upon suspicion that that student requires special education. |
| (a) Assignment of a surrogate parent if a student's parent is unknown or unavailable or if a student is a ward of the state. For students who are wards of the state or whose parents are unknown or unavailable, an individual, not an employee of the state or local agency involved in the care of the student, shall be appointed as surrogate parent for educational decisions at first suspicion of handicapping condition. | The administrator may look to the volunteer program for possible implementation strategies. The state education agency may also have identified "qualified" surrogates for this purpose. |
| (b) Written notification in the native language to parent or surrogate before evaluation, or change in placement. | |
| (c) Nondiscriminatory evaluation procedures. | |

| POLICY | PROGRAM OPTION |
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| (d) Periodic review of placement.<br><br>(e) Parents' rights in regard to access and confidentiality of records as contained in the "Buckley amendments."[4]<br><br>(f) Opportunity (for parent or school), in the event of conflict between parties, of an impartial due process hearing, including the right to:<br><br>(1) Receive timely and specific notice of hearing;<br><br>(2) Review all records;<br><br>(3) Obtain an independent evaluation;<br><br>(4) Be represented by counsel and be accompanied by persons with special knowledge;<br><br>(5) Cross examine;<br><br>(6) Bring witnesses;<br><br>(7) Present evidence; and<br><br>(8) Receive a complete and accurate record of the hearing. | |
| 13. The education agency shall provide for informal review of evaluation and placement matters. | Procedures for informal review will help to safeguard rights without the necessity of due process hearings in every case, if a consensus can be reached. The interagency agreement shall describe the administrative responsibilities of the Corrections Agency and the SEA in due process procedures. |
| 14. The notice of intent to evaluate or change placement shall include:<br><br>(a) The reason for the decision;<br><br>(b) Evaluation instruments to be used; | |

[4]The Family Educational Rights and Privacy Act, 1974, P.L. 93-380.

| POLICY | PROGRAM OPTION |
| --- | --- |
| (c) A statement of all rights, i.e., right to review records, right to a due process hearing, an independent evaluation;<br><br>(d) Identification of school employee to whom the parents may respond; and<br><br>(e) All necessary timetables.<br><br>15. In the case of parental refusal or non-compliance, the education agency may initiate a hearing.<br><br>16. During all evaluation and placement procedures, the student shall remain in his/her present placement unless there is danger to him/her or to others.<br><br>17. Policies regarding <u>hearings</u> shall include:<br><br>(a) Right of parties;<br><br>(b) Re-election and criteria of hearing officers;<br><br>(c) Appointment of a surrogate;<br><br>(d) Hearing decisions and appeals; and<br><br>(e) Timelines. | |
| VI. <u>ADMINISTRATION</u><br><br>18. <u>Residency criteria</u> for purposes of counting students shall be developed to assure that each student is counted only once for the purpose of receiving special education. | State policy is developed to assure that each student is counted, but counted only once. Such arrangements would be within the scope of the interagency agreement. |
| 19. P.L. 94-142, in requiring that the SEA be responsible for assuring that all requirements of the Act are carried out, including programs administered by other state agencies, establishes a <u>single line of authority</u> for the education of handicapped students within the state. This encourages | Interagency agreements must be developed to ensure that the services at the Youth Corrections institutions meet the SEA requirements. |

| POLICY | PROGRAM OPTION |
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| the state to:<br><br>(a) Centralize accountability.<br><br>(b) Encourage best utilization of educational resources.<br><br>(c) Guarantee complete and thoughtful implementation of the state plan for the education of handicapped students within the state.<br><br>(d) Ensure day-by-day coordination efforts among involved agencies. When more than one agency works to provide direct services for handicapped students, the expected outcome must be delineated in a written document--the interagency agreement, which includes:<br><br>(1) Identification of each agency's personnel involved;<br><br>(2) Funding responsibilities;<br><br>(3) Facilities;<br><br>(4) General program management and policy clarifications;<br><br>(5) Supervision of programs;<br><br>(6) Utilization of equipment, supplies and materials;<br><br>(7) Personnel and program standards;<br><br>(8) Establishment of student transition policies;<br><br>(9) Summer education program policies;<br><br>(10) Program referral procedures;<br><br>(11) Reports;<br><br>(12) Attendance; | |

| POLICY | PROGRAM OPTION |
| --- | --- |
| (13) Jurisdictional clarifications;<br><br>(14) Transportation; and<br><br>(15) Administrative costs and services. | |
| 20. An Advisory Panel shall be formed at the state level and may be formed at the local level. | Youth Corrections may choose to have representatives on advisory panels. |
| 21. P.L. 94-142 requires the education agency to establish written procedures for the development and implementation of a comprehensive system of personnel development which shall include inservice training of general and special instructional and support personnel and detailed procedures to assure that all personnel are appropriately and adequately prepared and trained. | The education administrator shall recruit qualified personnel, as defined by the Act, for all special education positions and provide inservice training which may be conducted jointly with the SEA. Inservice training should be arranged, which may help to aid in teacher certification. |
| 22. All financial support for special education should be a separate and identifiable part of the education agency's budget. Fiscal management policies shall include accountability measures, which allow the tracking of special education funds. | |
| 23. The SEA is to evaluate all public and private programs offering educational services to handicapped students. The evaluation data may include:<br><br>(a) A description of educational programs and related services;<br><br>(b) Recommendations for change;<br><br>(c) Personnel changes;<br><br>(d) Timeline for changes; and<br><br>(e) Technical assistance needs.<br><br>The evaluation team should include:<br><br>(a) Administrator of special education; | The Youth Corrections administrator collects and files data necessary for the SEA evaluation. |

| POLICY | PROGRAM OPTION |
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| (b) A regular education administrator;<br><br>(c) Special education teacher(s);<br><br>(d) Regular education teacher(s);<br><br>(e) Parent(s) (or surrogates); and<br><br>(f) Specialists in the provision of related services.<br><br>The program evaluation components include:<br><br>(a) Staff development;<br><br>(b) Child identification procedures;<br><br>(c) Program options and services;<br><br>(d) Personnel;<br><br>(e) Implementation of Right to Education mandate;<br><br>(f) Finance; and<br><br>(g) Implementation of IEP. | |
| 25. The education facilities used to provide special education shall meet minimum physical standards. | Standards should be obtained from the SEA and adhered to. |

## CONCLUDING STATEMENTS

Public Law 94-142, The Education For All Handicapped Children Act of 1975, has been considered landmark legislation, in that, all handicapped children and youth having a right to a free, appropriate public education is now actualized by law, as well as in practice. The State Education Agency is charged under the federal law with ensuring that the rights of handicapped youth are protected and that programs and services provided to the handicapped by other state and local agencies comply with the mandates set forth in P.L. 94-142. The judicial process by which a handicapped youth becomes committed to a correctional facility does not reduce the total state responsibility for providing those handicapped students with a free, appropriate public education. Congruent with the intent of P.L. 94-142 is the directive to the states to develop cooperative working agreements and arrangements between the different state agencies to provide a continuum of special education services, so that all the handicapped children and youth of the state receive a free, appropriate public education.

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